

A N
HUMBLE ADDRESS
Offer'd to the
CONSIDERATION
OF THE
Lords and Commons
Touching a Law concerning Perjury.

WHEN contagious Diseases reign, its natural for Men to have recourse to, and make their Application to Physicians, for their Direction and Help, as Persons, who by their Profession, are presumed to be the most knowing in such an Affair, and in the compass of whose Art it may probably lie to prescribe Remedies, that may quell and totally subdue their power, at least so control it, that they may not licentiously domineer and rage, to the utter depopulating of their Dwelling-places.

And thus when some heinous Immorality predominates in a Nation above any other, and good Men are under just apprehension and fears lest the Distemper grow Epidemical, it's reasonable for them to resort to the Civil Governments, and request of them the making of some Antidote, the framing of some wholsome Law against it, which may either kill it outright, entirely suppress, or correct its Poyson so, that it may not diffuse it self over the several parts of the Body Politic, to the Destruction of the whole.

Such an Immorality is Perjury, especially when it is solemn, and committed before a Judicatory; the prodigious increase whereof in this Kingdom these late Years, more particularly from 1678, until this present time, easily observable by the most unthinking and incurious, and yet never enough to be deplored, by any who believe the Existence of a Deity, that a Vene-

ration is due to his great Name, or have a sense, that the Honor of his Majesty is deeply wounded by this Sin, is the sole occasion of this Address to you, my Lords and Gentlemen, as those in whose power it lies, by the making provision of some severer Remedy, than is yet to be found extant among our Laws, for the giving a check to its daily growth, obstructing its farther Progress, and wider spreading it self among us, to be serviceable to God's Honor, and beneficial to your Country; it being Penn'd to implore your immediate Assistance in preparing such a Bill as your Wisdom shall think most expedient to this end, and to use your utmost endeavor afterwards, that it may have the force of a Law.

And while I offer such an humble Address to you, for the begging your aid, and that you would be pleas'd to set your hands to this excellent Work with all the speed you can, I have judg'd with my self it may not be useless to premise something by way of Advance concerning the horrid Guilt of customary Swearing, to make this of solemn Forswearing to have, as indeed it hath, a far more horrid Aspect, and so by this means, excite in you the greater Detestation of that Wickedness for its hideous Monstrousness, and a sprightlier Zeal to curb it.

For though I am sufficiently perswad'd there are very many Knowing Persons in your Illustrious Assembly, whose Abilities can more exactly represent to themselves this Villany in all its Blackness and Deformity than my Weakness can, yet, I presume, I may without justly and deservedly incurring the Imputation of doing an unnecessary and superfluous work, be allow'd in imitation of St. Peter's Example, writing to those who were before sufficiently inform'd in the Christian Doctrine, to put you all in remembrance of what you know already.

But besides, being only your Monitor and not your Instructor in this Point, I consider, that having your Thoughts employ'd by multiplicity of Business, and Public Affairs lying before you, you want that leisure to make those Reflections on the Flagitiousness of this Crime, which your Minds not otherwise occupied could themselves Suggest, and yet withal as busied as you are, you may find a Vacancy to peruse such, which are made fit for your hands by another.

And where for want of leisure to recollect what you know on this Subject, you may not form so full an Idea of its Ugliness, nor consequently entertain such a perfect Abhorrence of it, as may stir up and quicken you to set about framing such a Bill, as is convenient for the fore mention'd purpose, and expediting it with all the speed possible; yet what is more negligently and
loosly

Pet. 2.c.1.
ver. 12.

Plain (n.d.)

loosly said or thought on such a matter by another, than would have been by your selves, could you spare time to take a view of it in your own Minds may in some measure serve to supply this, and warm you with such a degree of hatred against it, as may engage you to set about drawing such a Bill, and dispatching it in some reasonable and convenient time.

Reas. 1. If then Laws should be enacted against Common Swearing, or those already past for corroborating the Divine Prohibition of this Sin, with civil Sanctions and temporal Penalties, be put in full Execution, or you supplicated to see this done, because it's a disrespectful using the Name of God, and so a slight put upon him, whose Majesty signified by it, is in all Relations to be infinitely revered by us, *i. e.* as far as we are able, commensurably to it self, and the being over familiar with his Name in our Mouths without considering the Reasons, the occasions we have to use it, the end for which, and the manner how, is an act of the highest Malapertness and Sawciness, and withal, this should be done out of a just Caution least a customary using the Name of the most High lightly, and without any regard at all, in matters, which are as they assever, bring Men on a sudden to apply that dreadful Name to things that are utterly false; an abstinence from swearing at all being the surest mound and fence against Perjury: (For if the Observation of one of the greatest and wisest Persons, who ere wore the *Roman* Gown) hold good, as no doubt it doth, that an habitual Liar is very apt to be perjurd, it is most certain that a frequent Swearer is in nearer danger of forswearing himself than such a one; Attention to what he deposeth being only able to preserve such a one from committing Perjury, which he wants who Swears rashly and precipitately, and by an inveterate Custom of Swearing, is very oft insensible whether he Swears or not. *Cic pro, Roscie.*

If for these Reasons, I say, common Swearing ought to be restrain'd by your devising of new Laws, or by your issuing out your Orders for the Execution of the good ones we already have; and these are Morives cogent enough to Petition you, that you would see this effectually done, the Reasons are more urgent and pressing, and the Morives more violent, why you should be apply'd unto, for the framing some sharp Act to prevent Perjury, in Courts of Justice more eminently, or to correct it, since that the Nation is already furnisht with, is in the nature of its Constitution too feeble to effect it, the Punishment to be inflicted on an Offender of this kind, being only the forfeiture of 20 *l.* and six Months Imprisonment, if he hath a Purse to pay, and standing only in the Pillory with his Ears nail'd to it if he be in-

5 *Eliz. 9.* solvent; and that of the Suborner to this Wickedness being only a Fine of 40 *l.* and 6 Months Imprisonment, and standing an Hour on the Pillory, and a disabling both to give Evidence for the future, till the Judgment be revers'd by Attaint, or otherwise.

And yet the Crime of Perjury is of that outrageous Nature, that it's an affronting God in the highest degree, and most provoking manner that Men are capable of doing it, it's a Corrupting and Suborning as much as in them lies, or thinking they may be able to do so, Him who is Eternal Truth, Truth it self, to be a witness to a Lye; it's a derision of his Omniscience, a scorning his Justice, and bidding defiance to his Almighty Power, while they call him in to be a Witness to what they say, and a judge of their Falshood, if guilty of any, imprecating him in this case to avenge it, with pouring out his Judgments upon their heads, which they would not be so presumptuous and daring to do, if they did believe any thing of his taking notice of this, of his Inclinations and Will, or his being in a Condition to punish their Perfidiousness.

Reas. 2. And as the Crime is of a more enormous bulk, and more affrightful Complexion than any other, except it be a flat and obstinate denial of his Existence, or transferring that Honour and Worship, which is his peculiar prerogative to his Workmanship, or rather the immediate Workmanship of Mens hands, yea in some sort equals their Magnitude, and is of the same dark hue with them if it doth not exceed them, so far as it is a mocking him, which our Estimation placeth in the foremost rank of Injuries, that can be done us; so in Proportion it draws a Judgment upon the Person greater than others; God having positively declared that he will not hold a Criminal of this kind Guiltless, *i. e.* that he will not pardon him, threatned that he himself will be a swift Witness against such a one, pursue him to Condemnation, and pronounced farther, that the flying Roll or Sithe in the Translation of the 70, 20 Cubits long, and 10 broad, shall enter into his House, and consume the Stones with the Timber thereof, *i. e.* lay his Family and Estate wast, and the Heathen Oracle mention'd by *Herodotus* threatned as much.

Exod. 20.
Mal. 3.5.
Zech. 53.
*πετόμενον
σφίγγων.*

And its no wonder so dreadful a Punishment from God pursues it, since it's a Complication of other Sins, not merely a contumely against him, but a wrong to our Neighbor, generally fails not to be join'd with Theft and Murther, taking away the Lives, and sweeping away the Estates of the Innocent, and so is not barely an omission of that common duty of Justice we owe

(5)
us (which certainly is to have our Lives and Estates and Reputations defended and secured,) but a direct Commission against the Rule of it, in doing that to others, which we would not have done to our selves, despoiling them of their good Name, Honors, Possessions, and their very being, to make it a compleat and consummate Villany.

It not only changes the course of Justice, which should be equally administer'd to all, every man that is born into the World, having a natural claim to have right done him, but perverts it; not only damns up those streams, which should so flow, as every one should be refresh'd by them, but turns them into a clean contrary channel, where with their Rapidness they carry away and overwhelm those, whose merits requir'd a far different fate, instead of sharpening and turning the edge of the Sword or Axe against Delinquents and Malefactors, for whom the Law appointed them, it makes these apply'd to the cutting off the most virtuous and honest in a Public Society, as it did most eminently at *Athens* while the 30 tyranniz'd there, or at *Rome* under the alternately prevailing Factions of *Marinus* and *Sylla*, all whose stubborn and incorruptible Integrity will not suffer them to bow down to Usurpation, or applaud and congratulate Violences.

3. *Reas.* But Vengeance doth not only pursue, and at last overtake, and severely scourge perjur'd Persons themselves and their Posterity, whom it oft roots out from the face of the Earth; but likewise this crime, if suffer'd to escape scot free by Civil Judiciaries, which should punish it, doth many times over and above drawd own from Heaven heavy and sore Judgments upon a whole Nation, where it is thus suffer'd to go off with Impunity, or march off in triumph over defeated Justice.

This Sin is usually specified by the Prophets, *Jeremiah* especially, as one of those many crying ones, which instigated God to threaten the *Jews* with Extirpation out of their own, and Deportation into a foreign Land, and incens'd him afterwards to put that Sentence in Execution, because, though they swore as the Lord liveth, yet they swore falsely.

4. *Reas.* Howbeit should no Calamity overtake a Nation, where this Sin is rife, and no Judicial Cognisance taken of it, or dismiss'd in Courts with a shrug or grimace only, yet it's a foul disgrace to that People, where it's frequently practis'd and rarely discountenanced; Sin, It was the wise Man's Observation long ago, is a reproach to any People of what kind soever it be, as Drunkenness, Gluttony, Wantonness, Inconstancy wherewith some Nations are tax'd as their Epidemical Diseases by others,

Jer. 4. 2.
Hos. 4. 15

Prov. 14:

which are sound and free from them. But none casts a blacker and yet juster Aspersions upon a People than Perfidiousness.

The use of an Oath is a tacit Reproach thrown upon Mankind by themselves, for their baseness; for it implies they cannot believe one the other upon their bare words and asseverations but that must be interposed to gain credit to these, like as the use of Paper or Parchment, Wax; Seals, Subsignations in Contracts and Obligations is a kind of exhibiting a Charge, and giving in Evidence against their own Honesty, which they mutually mistrust, unless guarded with these Formalities. But when once words backt with Oaths, Oaths first brought into use to put doubtful Truth out of question, are not of sufficient validity to confirm it, nor power enough to gain credit, its the outmost Ignominy and Scandal of a Nation.

Epimenides & Calimachus.

What a tainted Reputation have the *Cretians* in Story, when Poets, whose business is Fiction, nay one of their own, who may be thought would have conceal'd his Country's Shame had it not been too notorious, shall charge them with being perpetual Lyars, and to play the *Cretian* shall pass into a by-word, importing as much as to deceive?

Jur. enal.

What a discredit is it to the *Greeks* for daring to lard their Historical Relations with Fables? But what a fowler blot is it for for them, the *Ligurians* and *Carthaginians* to be noted for not observing their Faith, and to be transmitted to all after Ages with such a Character from the *Roman* Writers, that their faith and downright Perfidiousness, how widely different soever these two words are in their original Signification, pass among them, as pieces of the same weight and value?

And albeit some one Man of Honor and Principles may make an Exception to a general Character, and by his stiffness and constancy to his Word and Oath may serve to redeem his Country from such an Imputation, yet he will hardly have the confidence to own his descent thence without a blush, when it is thus stigmatized.

Reas. 5. But however the worth and honesty of such a one may help to rescue his Country's Fame, as the Justice of *Aristides* may give *Athens* a Credit, whereby she may rival the Glory of *Rome* for her *Cato Censorius*, or his great Grandchild of *Utica*; yet the Religion such a Country professeth can never escape the having dirt thrown upon it by Men of a different Persuasion, if it less Perjuries, which are as much contrary to the dictates of Natural Religion, as they are against the express Prohibitions of Reveal'd and Christian one, go away unpunish'd, or what is tantamount, but lightly. It subjects it to extream doubts whether the Religi-

on of such a Denomination, or such a Sect of it be Orthodox or no ; however it puts it out of all manner of question that such Professors or Disciples who are guilty of this outrageous Crime, or wink hard at it, while committed by others, do not believe a single Syllable of its Doctrine to be true, how grave and demure a Countenance soever they set upon the matter.

It was easy for *Amurath* the II. to imagine Christian Religion gave Countenance to Perjury, when he fully understood that *Uladislaus* K. of *Hungary* had broken the Truce of 10 Years concluded between them, and confirmed by an Oath, upon the Solicitation of one of its Purple Fathers, Cardinal *Julian* sent from its great Patriarch in the West, *Eugene* the IV. to represent the Advantages he had to do it, while that Sultan's Arms were employ'd in *Asia* ; and he would have thought he had had an infallible ground to conclude it false, had not his Appeal to the God of the Christians, with his hands lifted up to Him in a Supplication, (and some say with the Schedule containing the Articles of Truce held up in them) at the Battle of *Varna*, that he would revenge the Perfidiousness of his followers, been answer'd with a Victory immediately on his side, which before inclin'd to the Christians, *Uladislaus* the Breaker of it being slain in the Field, and the Cardinal, who instigated him to it, in the Pursuit. And so it was for *Abimelech* the *Saracen* to think the same, had not his appeal against the Perjury of *Justinian*. *Rhinotmetus* fastening the Articles of the broken Peace to a Spear, received the like determination by the discomfiture of that Emperors Army.

Bonfin.
Dec. 3. Lib.
6. Annal.
Turcici ad
An. 1443

Cedron.

Reas. 6. But, abstracting from the Religion of an Oath, and the Punishment it draws down from God on particular Persons, or a whole Nation guilty of it, and the Scandal it reflects upon a People, or the Religion profess'd by them, the inflicting a light Punishment on the Perjur'd, such as makes him no way concern'd with the fear of undergoing it, creates an opinion in the generality of Mankind, who take their measure in judging of the quality of Offences from the penalties allotted to them by the Law, that the Crime is trivial. And such a conceit once imbibed by Subjects is apt to shake the Crowns on the Heads of Princes, and tends to render all Government precarious and tottering, because it is an Invitation to them to break all their Oaths of Obedience to them, the Esteem of whose Religion and Sacredness, is a stronger security to them than Guards and Armies.

Nor can it be reasonably expected, that they, who have learn'd not to value their Faith stak'd down at the Barr in an Assertory Oath, should regard the keeping of it pledg'd to them in a Promissory one, though sitting on their Thrones, or in the

Deut. v. 16.

Besides, as all Government is or should be built upon the basis of Justice; so this Virtue must be the Pillars and Buttresses to support it: And if at any times it happens, as too oft it does, that that Civil Fabrick should be erected upon other Foundations than those of Justice, yet upheld it must be by doing it. And because it's rarely seen that they, who get the Power of Government into their hands by Fraud and Wrong, are careful of doing right, we may thence prognosticate, instructed by the Examples of past Ages, that they will soon sink themselves and Estate into irrevocable Ruine.

But all administration of Justice must of necessity be stop'd, if Perjury be in the way; And in this corrupt and degenerate Estate of Mankind, numbers upon the hopes and prospect of an encouraging Reward, if offer'd, and there no fears of a slight Punishment, should it be their misfortune to be discover'd, will without any difficulty of persuasion, be induced and stand ready prepar'd to commit it.

Thus in brief I have laid before you, *My Lords and Gentlemen*, the heinousness of Perjury in its own Nature, and the terrible-ness of it in its Consequents, to spare your pains and time employ'd now upon many important Affairs lying before you; some portion of which the reducing these to your Memories, and considering them in your Thoughts would divert; And that taking my rise thence, I might be the more likely to succeed in my design of moving you to prepare some Bill for the speedy suppressing or curbing at least this growing Crime, by providing some penalty against it, which by its sharpness may be more effectual to the obtaining this end, than that already ordain'd by our Laws.

Now with all due Submission to your great Prudence and Experience, *My Lords and Gentlemen*, it's probable that after research and examination, no expedient will be found so adequate and apposite to this purpose, no remedy so proper for the cure of this Distemper as the making this Crime Capital in the Offenders; and fortifying your Bill which shall interdict it with the Sanction of Death: For the sharpness of the Law in punishing a Crime, disciplines Men into Virtue and good Life. * By the Roman Constitution, Those, who suborned or corrupted any to depose falsely against another, if their quality was ignoble, were punish'd with Death: If their Condition was Honorable with Confiscation of Goods and Transportation, which though a Penalty on this side of Death, yet it was in the Eye of their Law a Capital one.

* Serr. Cæ-
cilius Ap
Agellium
Noct. At.
l. 20. c. 1.
Paulus lib.
5. Sentent.
ad Leg.
Cornel. Te-
stamentar.
Hii qui ob falsum Testimonium perhibendum acceperit, dederint, Judicem ut
Sententiam ferat, vel non ferat corruerint, corrumpendumve curaverint, humiliores capite
puniantur, honestiores publicatis bonis cum ipso Judice in insulam deportentur.

Among

Among the *Lycians* a false Evidence had his Goods and Estate seiz'd on, and was himself sold for a Slave ; and the loss of Liberty among one of the wisest Nations and best able to judge of it, was rank'd with Capital Penalties, &c. at least, I think, the Punishment with which this Bill should be strengthened ought to bear a just proportion and equality with the mischief intended by the Perjur'd Person against the Innocent ; so that whatsoever Punishment the Law hath denounc'd against an Offence, and the Person convicted of it by legal honest Witnesses, was to undergo, the same, if he prov'd his Innocency, should the false Depo- nents suffer, forasmuch as their false Oaths were directed and le- vell'd to do that same mischief to him.

*Heracled.
Ponticus
de Lycia.
παλαι δὲ
τὸς ψυδ-
μαρτυρας.
ὡς τὰς εἰ-
ας αὐτῶν
σημαίνειν.
Jure Ro-
man. voca-
tur Dimi-
nitio Ca-
pitis, v.
Zouch.*

Elem. Jur. P. 4 § 9.

For that would be but Retaliation, than which no part or act of Justice can be more equal, it being meeting back to Men the same measure they first meted out.

*Mat. 7. v. 2.
Rabbin in
Gomara,
Tit. San-
hedr.*

And nothing appears more reasonable, than that the Contriver of a villanous Accusation, should receive for a Reward of his Merits the Punishment due to the Villany ; the forgers of a Plot should enjoy as the Fruits of their Labor, what the Plotters ought.

The Tyrant to whom the Brazen Bull was presented, thought it highly equitable as well as the Poet, that the famous Inventer of this Engine for tormenting of others, should first handsel his Work, and try the Experiment, how well it bellow'd.

*Ovid. Trist
5 Eleg.*

Yea, God hath allow'd this procedure, and not only so, but establish'd it for a standard of Justice, Eye for Eye, Tooth for Tooth, &c. and particularly in the present Case, if he shall testi- fie falsely against his Brother, then shall ye do unto him, as he thought to do unto his Brother, and by this they proceeded in putting the two Elders to death, who had impeach'd *Susanna* of Adultery. And according to this Principle it's the common de- termination of Casuists, that a corrupt Judge, a false Accuser, or Evidence should make Satisfaction to the Praty griev'd, propor- tionable to the damage he sustain'd by the Sentence, Impeach- ment, or Testimony.

*Exod. 21.
24. 25.
Deut. 19.
v. 18.
Simem-
brum ru-
perit, Ta-
lio esto
L. 12. Tab.
Covarru-
vias cap.
Peccati,
Part. 2.*

And it's correspondent to his own method of Providence, when he takes the Cause into his own hand, by the Justice of which it so happens, that the Foot of the Wicked is caught and entangled in the same Snare, that he laid and privily hid for others, falls in- to the same Pit he dug. This very Conduct God observed in the Sin of *Abab* and *Jezebel*, the Dogs lick'd the Blood of the last in that very spot of Ground, which she by the procuring or suborning of false Witnesses robb'd *Naboth* of, together with his

*Lessius de
Ju. &
Just. lib. 2.
cap. 33.
dub. 8.
Grot. de B.
& P. l. 2.
c. 16.
2 Kings
9. 36.*

1b. v. 25.

compare

1 Kings

21. v. 23.

2 Kings

9. v. 36.

Abbas U-

spergens.

Sigebert.

Gemblac.

ad Ann,

1080.

Life; and the slain Carcass of *Abab*, who coveted an evil Covetousness against his Vineyard, and by it occasion'd the Perjury and Murther by which this was gain'd, was thrown at *Jebu's* command into that very portion, who remarked the Truth of God in the completion of his Prediction, as well as his Justice in the affair. So he did in punishing *Rudolph* of *Swaben*, the Pseudo-Emperor, set up by Pope *Hildebrand* against his lawful Sovereign *Henry* the IV. (which is not only taken notice of by Historians, but related by them as his own Sense) whose Conscience being wounded with a Reflection on his guilt, as well as his body was at the Battle of *Elastra* or *Elister*, having first lost his Right-hand, before *Godfrey* of *Bulloin* struck him through the Breast with the Staff of the Standard he carry'd in that Action, extorted this Confession from him, That he justly suffer'd in that Hand, which he laid upon the Gospel when he swore that Fealty to *Henry* the IV. which he had perfidiously broke.

In short, our Wise Neighbor-Nation of *Scotland*, tho I know not whether she exerciseth this Retaliation against false Witnesses (which yet I believe she doth, having great respect, in the framing of her Laws, or the practise of them to the Imperial) doth it however against the Judge; so that if at any time, upon the scanning o'er again the Judicial Proceedings, it shall appear, the Judge, transported by Hatred, Envy, or any such vile Passion, or sway'd by Bribes or Interest, directed the Jury to bring in a Verdict, which took away wrongfully the impleaded Person's Life, he shall, if alive at the Re-examination of the affair, satisfy for it with his own, or if not, his Estate shall make Satisfaction proportionate to the Damages the Heirs of the Executed Person sustain'd by his Death.

But forasmuch as neither making the false Deponent suffer the Punishment enacted against the Crime, whatsoever that be, which he injuriously objects to the innocent, may be sufficient to restrain the Sin of Perjury; nor yet may the infliction of Death, nor the Confiscation of Estate and Goods, together with the perpetual loss of Liberty in every such Case, carry terror enough in them to affright Men, who are audaciously wicked from adventuring on it, to execute the Conspiracy they have entred into against the Lives, Fortunes, and good Names of others; because they may hope to cloath themselves and machinations with so much night, to walk in such deep silence and thick darkness, as not to be descry'd by the most diligent and piercing Eye, nor the quickest Ear, and then if the diabolish Engine be so secretly placed, and the Mine dug so deep that they cannot be discover'd before hand, the one may be play'd and the other sprung with

dismal

disfmal and fatal Success against the best Men and worthiest Patriots; it will become the Sageness of your Illustrious Assembly, *My Lords and Gentlemen*, to consider of means, even to obviate, if possible, the mischievous designs of such, who have a mind to Perjure themselves to compass the ruine of others, upon Confidence they can order matters with so much cunning, and carry them so closely, as they shall not be detected.

In my Opinion, which I deliver with all deference to your Judgments, it would mightily conduce to this end, if in the same Bill you should prescribe Rules, whereby Courts of Justice, should regulate themselves in admitting Persons to give Testimony. For all without distinction are not fit to give Testimony in many Facts, or to be believ'd; and such who are infamous for Lewdness in all the Scenes and Stages of their Life, I take to be very incompetent Witnesses, and that their Testimony, for want of Credibility, ought to be rejected.

It seem to me that there is greater Reason why the Law should be careful in requiring Qualifications in those, whom she allows to be Witnesses, as in general that they be Men of unblemisht fame for their probity, than she is in directing what Choice the Sheriff should make of Jurors, who according to her Ordination is to impanel no suspicious one; but they are to be all of good Fame and Name; seeing it is the Depositions of those which wholly influence these in their Verdict. Wise Nations have constituted these and these Qualifications for Witnesses, and that those who did not appear so condition'd, should not be heard at the Barr.

According to the *Roman Law*, the Honesty, the Manners, the Gravity of the Witnesses were inquired into.

And the Judges had Consideration of, and to the Manner and Reputation, and Honor of the Witnesses lives as the true and solid Grounds of Credibility.

And Servants therefore for the Ignobleness of their Condition, and as believing they might for that Reason be easier corrupted, were debarr'd from giving Testimony, unless wrackt to speak the Truth.

In the Jewish Constitution, neither Thieves after they had made Restitution, nor common Gamesters were lookt upon as any more competent Witnesses, than Persons bereft of their Reason. The first, I suppose, they apprehended might be induced again to do injustice when it serv'd their Interest, and that the Second, who for lucre were apt to forswear themselves at a Gaming-Table, might have the same prevailing motive to

*Articuli
sup Char-
tam 28
Edv. 1. c. 3.
34 Edv. 3.
c. 10.
1 Rich. 3.
4. c.*

*Nam in
Testimoni-
is Fides,
mores, Gra-
vitas exa-
minantur
L. in Test.
ff de Testi-
bus. In Te-
stibus &
vita quali-
tas spectari
debet &
dignitas.
L. 3. §. lege
ff de Testi-
bus.*

*Grot. de B.
& P. lib. 1.
c. 2. § 10.
Annot. 11.
Idem in 17
de*

Plut. Apo- theg. τὸν δὲ πάλιν ἀσπαζόμενος, &c. do it at a Barr, might make no more bones of Cozening by a false Oath, than by false Play, as he in *Plutarch* averr'd, Men were to be cheated by Oaths, as Boys by false Dice, or that the former was Mens, the other Childrens play.

Mackenz. L. of Scot. B. 4. T. 4. In *Scotland* I am informed the Person Arrain'd for Treason, hath the liberty to Cite by a Subpcena, [or as they speak, allows Letters of Exculpation] not only Witnesses of his own Peaceable and Honest Conversation, but to confront those, who are Evidence for the Crown, and if they can prove them to be Persons of a very ill Fame, their Testimony shall not be accepted against the Prisoner.

L. 3. ff ad Leg. Cornel. de Falsariis. Cicero. And as some ought to be excluded from the Privilege of bearing a Testimony in any case, especially Capital ones, for their infamous manner of Living; so should Courts be instructed or authoriz'd to reject others likewise, of whose Condition of Living, either by Reason of their Obscurity, or their shooting up like Mushrooms, all on a sudden, no knowledge can be gain'd. For when this cannot be discover'd, the Prosecuted are deprived of their main guard and principal defence against false Depositions. Upon this reason the *Roman* Law wisely prohibited under severe Penalties, the Witnesses changing their Names, because by this means they would so hide themselves as no Inquisition into or Examination of their Lives can possibly be made; as the Cuttle fish by the effusion of a Juice like Ink, so blackens the Water that she secures her self from being caught by all the Art of the Fisher-man, and this shifting of their Names could not be expounded to be done to any other end, than that they might have the better opportunity to circumvent and oppress those they accused.

Had the Law heretofore made these the Requisites of a Witness before his Testimony could be accepted; a Fuller could not have had the impudence or the folly to pretend to be an Evidence in a Plot, in which he would have involv'd some Members of the House of Commons; nor Young and Blackbed to appear in an Accusation of Treason against the Archbishop of Cant. the Bp. of Roch. and other Temporal Lords; Nor L—, K—, W—, the Presumption to imagine they should be credited against the L—shire and C—shire Gentlemen, by a Jury of the like quality (no more than any consiering Person could have been inclined to think, that Capt. Wit—'s discovery, that Dr. Tho—d and Mr. Pi—, had been employ'd by the Lords Wor— Ayl— and Lich— to transact with him, that he assisted with a gang of his Fellow-Robbers would kill his Majesty, as he was Hunting in Epping or Windsor Forest, had any weight of Credibility in it, though he had made it in Confession, or as he

was turning off at the Gallows) they being all conscious to themselves of the Profligateness of their Lives, of having prostituted their Reputation, and some of them, that they had oftner chang'd their Names, than the dread of Carchpoles had made them change their lurking holes, or their wretched Poverty would permit them to change Shirts.

And as the Testimony of all sorts of Men without Discrimination, or any previous inquiry into their Lives upon the meer calling for them by the King's Council should not be admitted; for this is precipitating a Man's Condemnation; so neither should the Judges or Gentlemen of the Jury be too easie in giving a credulous Ear, or yielding up their Faith, though the Crimes, with which the Prisoner is charg'd, are attested by Persons, who were not of a lost Fame, if they are of that nature, as would affect their Life, Estate, Honor, upon Conviction, unless there were concurrent Circumstances, which render'd their Deposition probable. The more enormous the Crime objected against the Prisoner, or the more heinous the Punishment of it is, the more difficult the Judges and Jurors should be to credit its Commission by a Man of fair and clear Reputation for Honesty and Integrity.

Quintillian, whose Art made him capable of in instructing both Bench and Barr, hath mention'd this. *Quintilian l. 4. c. 3.*

Besides, *My Lords and Gentlemen*, it will deserve your Care, because it may concern your Safety, to get it enacted, that the proof should be such, as should touch not only the Species of the Crime, but reach also to the individuality of the Fact, and that likewise there should be concurrent Testimonies as to the Identical manner of perpetrating it; two at least, as God ordain'd there should be two or three in order to convict any of Rebellion against himself, *viz.* Idolatry; and as it is practis'd at this day in *Scotland*. For though two should swear home against a Person as to a particular Treason, namely, a design to Murther a Prince, or stir up Insurrections against him, yet a discrepancy in their Evidence, as to the intended manner and method of compassing his design, would afford good ground to suspect the Truth of it. *Difficillima enim est gravissimis cujusque sceleris fides. Deut. 17.6.*

He, in whom the Spirit of Wisdom of the most High God was found, proceeded upon this ground, to clear the Innocency of *Susanna*, after she had been cast by the point blank and joynly agreeing Oaths of two Elders, as to the Commission of the Adultery they accused her of, and to disprove their Testimony, convicting them of forging a lying Accusation against her, by their differing among themselves, as to the Place where these pretended

Susan v. 25 pretended Eye-Witnesses saw the foulness acted, the one, when
Et v. 58. he interrogated them apart, affirming it done under a *Mastick*,
 the other under a *Holm-Tree*.

Had the Law thus antecedently directed, it had been impossible that *C. Sidney* should have been condemn'd in *West. Hall*, when there was but one single Witness, who was positive to the Conspiracy he was accus'd of, supported by another, that he surpriz'd a Treasonable Pamphlet in his Closet, which had no other proof that it was his own Writing, than one fetch'd from a similitude of Hands. Or that *Mr. Ash*— should have been Sentenc'd at the *Sessions-house*, for having Papers seiz'd upon him (which the Court declar'd to contain Treasonable Matter) while the Proof, though full and pregnant to that point of Seizing, was main and defective in the making out, even so much as by a conformity and comparison of Hands that he wrote any of them, or by collateral Circumstances that he knew what they comprehended. The *L. Marl*— could never have been committed for Treason upon a single Information, when it could not be reasonably thought, that he should be either so mutable as to engage in a design to pluck down that Government, to the raising of which he had so powerfully contributed, or it so ungrateful as to do it against that which had caress'd him with bestowing Honors upon him, or so imprudent as to seek to better his Condition by an alteration of it. Nor could the *E. of Hunt*— and other Persons of Quality have been deny'd the benefit of the Habeas Corpus Bill, when there was but one Witness upon Oath against them: Though *S. A.* had the boldness to call a single Testimony, the having Evidence against each Prisoner, and the art of Equivocating so dextrously, as to make Witnesses against the Prisoners in his Affidavit, pass upon the Ct. for a Plurality against every single one, and get them thereby remanded to the *Tower*.

*Journal of
 the Lords
 House, Nov.
 11. 14. 15.
 1692.*

Besides the foremention'd Reasons to bring in such a Bill, you may be encourag'd to do it, from the just ground you have to hope that it cannot want the Royal Fiat, *Roy le veut*, to create it an Act as soon as tender'd to his Majesty; He being a Prince of too great Wisdom, not to understand his Interest in it, and how beneficial it will be to the Crown; of too great Generosity to refuse the People so public a good as this will be to them, and of too grateful a Memory, not to oblige you in passing it, if you insist upon it, from whose Donation, not 6 Years since, he receiv'd the Imperial Crown of this Realm with thanks; of too much Constancy to depart from Resolutions once well taken up by him; and since therefore in his Declaration emitted by him
 when

when Prince of *Orange*, one of the Reasons assign'd for his coming over was to obtain a Reformation of Abuses committed in the Tryal of Capital Causes, and there can be none more foul than Perjury, by which in one breath, the Lives, Estates, Honors, of the most Noble may be taken away, and they will be always in this Danger from Wicked Men, while the Motives to induce them to forswear themselves continue more prevalent, than their Fears to suffer the slight Punishment (as it is now) of their Perjury, if that be detected; you cannot apprehend, without an injustice, at the same time you do so, to these his Heroic Qualities, that the King of *England* will not redress what the Prince of *Orange* complain'd of.

I say, you cannot harbour such a Jealousy without detracting from those his Royal Virtues, and supposing, He would fly to such little Subterfuges, as Captain *Bessus* did for an Excuse why he did not fight with those who challeng'd him, that *Bessus* the Valiant was not bound to answer for what *Bessus* the Coward said or did; or without thinking him (what is not meet) wretchedly careless how He transmitteth his Great Name to Posterity, which, in case he did not after the gaining of the Diadem, perform what he promis'd before he wore it, might grow into a By-word, as a famous Lawyers did for varying his Judgment with his Place and Station: *The Case is alter'd now, quoth Ployden*.

If then, *My Lords and Gentlemen*, you have any Zeal for God's Honor, as you shew'd a great deal in providing against the Profanation of his Holy Day, which yet was but guarding the border and fringe of Religion, for the observing of a Day is no more of the Essence of honoring him, than Time is of any Civil Action, and if I remember right, against the profaning of his Great Name, by customary Swearing, you ought to shew it more, in being solicitous, that it be not treated with insolent Scorn, as it is by For-swearers.

If you have any regard to the Safety or very Being of your Country, and would divert God's Judgments, which though delay'd for a Season, will at length over-take and punish a Nation, where Perjury is suffer'd to thrive to the last degree, to an utter Excision of them.

If you would not have your Country left Desolate by Multitudes of its Inhabitants transporting their Persons and Effects into Foreign Parts, where their Lives and Estates, which here lie exposed to the Mercy of Perjurious Villains, who have no more regret than Conscience for the destroying both, may be in some reasonable Security.

If you have any Veneration for its Honor, or would not have it branded abroad with the infamous reproach of being Perfidious, or redeem us from the Scandal of that Imputation, which is cast upon us, of being a People, who have no Sense of an Oath.

If you have any compassionate Care for the Lives of your fellow Subjects, which lie continually exposed to every profligate Rascal, who hath the Audaciousness to run the risque of peeping through an Inch-board, or having his Ears nail'd to it, or at the utmost can stand the battery of Rotten-Eggs, in case he should be deprehended to have sworn falsely against them.

If you would not have the Land defiled with Innocent Blood, would not have it found in your Skirts, nor Blood touch Blood, nor Robbery committed with Color of Justice, which Crimes drew forth at first God's complaint against *Judah* and *Hierusalem*, and afterwards his sorest Judgments upon them.

Or if you have any Tendernefs for your own dear Lives, or value your own Estates and Honors, so that you would not by any Circumvention or

Sup-

Supplantation from false, mercenary, prostitute Tongues be deprived of them, to which Danger you lie extremely subject, while they are only guarded by so slender a Penalty, at that of the present Law, against Lying and Perjurious Lips.

If you would transmit these as safe to your Posterities as you receiv'd them from your Ancesters.

If you would not have your Noble or Generous Blood stain'd, your ample or fair Patrimonies annihilated by the Forgery of Crimes against you, which confirm'd with false Oaths will produce this Calamity.

Proverb.

12.

If you would have the Crown sit fast on the Heads of those Princes on which you have placed it, if you would have them fixt in those Thrones where you have seated them; since by a false Accusation maintain'd by superadded Perjury, which, as the Law now stands, is little less than indemnified, their ablest Ministers may be ravish'd from them, and be thereby deprived of the Aid and Support of their faithful Counsels. Since the Thrones of Kings are Establish'd by Righteousness, and Crown'd Heads subsist by the Reputation of Justice, as well as ordinary Traders, and this Reputation must mightily be impair'd, if under their Reigns, the Innocent shall want the necessary defence of some severe Law against the Assaults of Perjury.

If you have any regard to the united Wishes and Desires of the best and soberest part of the Nation, who considering the late Danger, which through the Perjury of Miscreants lost to all Virtue and good Name, had encompass'd some Gentlemen of the first Note in their several Countries, and had like to have swallow'd them up, and might probably have suckt in many others, had not their wicked Artifices been discover'd by a timely Providence, are bent upon requesting and obtaining such a Security from you; I say, if any Consideration be had of these, you then have, *My Lords and Gentlemen*, all the Encouragement to prepare such a Bill, as will procure this Security, which a well built Hope, that it will pass into a Law, can give you (for you cannot fear that it will miscarry for want of his Majesties Signing it, without suspecting him to be less gracious than he hath Promis'd or hath Reason to be to a People devoted with such Affection to his Service) And all the Reasons and Motives, which the Honor of God, the Reputation of your Native beloved Country; its Safety together with that of his Majesty, which is deservedly precious in your Eyes, the private good of each honest Man singly, and the Public Good of all conjointly can suggest, to incite you to use all the Application you possibly can, for the dispatching of so necessary and useful a Bill, which will make the Nation happy, as far as the covering Innocency, from a Destruction at any time design'd against it can, and your selves in particular for ever memorable, by procuring so great a Good to it.

F I N I S.

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WHILE these Sheets were a Working off, a great Peer I am told; brought into the House of Lords a Bill, worthy of himself, his high Station, to the same end that this was intended to promote, which I cannot take notice of, without making all the wishes for its Success, which the Justice and Honor of it deserves.